



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: *Gross*

) Art Unit: 3621

Serial No.: 10/771,049

)) Examiner: Not Assigned

Filed: 02/02/2004

)

For: *Notification system and method for media queue*

)

PETITION TO MAKE SPECIAL
UNDER 37 C.F.R. § 1.102(D) AND MPEP § 708.02 (II)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby respectfully petitions that the above application be made special under MPEP § 708.02 for the following reason, namely, that actual infringement exists.

A declaration in support thereof is included.

Copies of the references deemed most closely related to the subject matter encompassed by the claims were previously provided by way of an Information Disclosure Statement filed June 10, 2004.

Please charge any fees, including any amount specified by 1.17(h), to deposit account no. 501-244.

02/01/2005 MAHMED1 0000042 501244 10771049
01 FC:1464 130.00 DA

Respectfully submitted,

J. Nicholas Gross
Registration No. 34,175
Attorney for Applicant(s)

January 25, 2005
726 Duboce Ave.
San Francisco, CA 94117
Tel. (415) 355-9800
Fax (415) 355-9006

I hereby certify that the foregoing is being deposited with the U.S. Postal Service, postage prepaid, to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 this 25th day of January 2005.



Attorney Docket No.: JNG 2004-5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: *Gross*) Art Unit: 3621
Serial No.: 10/771,049)
Filed: 02/02/2004) Examiner: Not Assigned
For: *Notification system and method for media queue*)

DECLARATION IN SUPPORT OF PETITION TO MAKE SPECIAL
UNDER 37 C.F.R. § 1.102(D) AND MPEP § 708.02 (II)

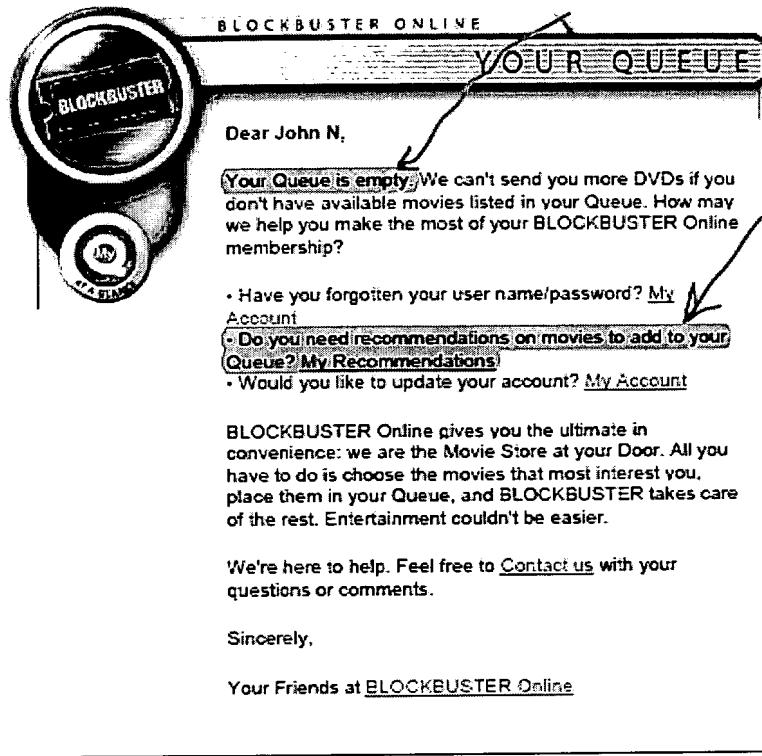
In support of the accompanying Petition, Applicant declares as follows:

1. I am the applicant of the above identified application, as well as the attorney of record. My Patent Office Registration number is 34175.
2. I allege that there is an infringing use of the methods of such application by the operations of a commercial Internet website operated by Blockbuster for renting DVD movies, as found at <http://www.blockbuster.com>.
3. I declare that I have made a rigid comparison between the Blockbuster web site operations and the claims of this application, and in my opinion, at least claim 11 of such application is unquestionably infringed:

| | |
|---|---|
| 1. A method of notifying a subscriber to a content provider of activity in a subscriber rental queue associated with the subscriber, including the steps of: | The Blockbuster (BBI) website notifies subscribers of activity in their rental queues; See, e.g. http://www.blockbuster.com/home.html |
| a. defining a set of notification rules for the subscriber rental queue, which notification rules are authorized by the subscriber; | As part of capturing subscriber <u>preferences</u> , the BBI website includes a Newsletter <u>notification</u> option that is configured on a user by user basis for their respective rental queues. Individual subscribers can opt in (authorize) BBI to send such materials. See, eg. http://www.blockbuster.com/corporate/displayHelpDetails.action?articleId=1083058 and http://blockbuster.qrs1.net/bbsmi/sub/UserTypeAction.do |
| b. monitoring the subscriber rental queue in accordance with said set of notification rules and a separate set of queue replenishment control rules authorized by the subscriber to determine if a composition and/or ordering of playable media titles in the subscriber rental queue should be altered; | BBI “monitors” the subscriber rental queues in accordance with the options selected above. The subscriber is also requested to rate movies so that a recommendation engine can give suggestions on new movies to be added. The recommendation engine thus effectuates a set of queue replenishment control rules to be used to alter the rental queue. |

c. sending a notification to the subscriber in response to an affirmative determination under step (b) that such notification is necessary based on said set of notification rules.

A notification is sent to the subscriber as seen below, under conditions, for example, where there is new material that can be added to the queue because it is empty.



4. I have made or caused to be made a careful and thorough search of the prior art. Copies of the references deemed most closely related to the subject matter encompassed by the claims were previously provided in an Information Disclosure Statement filed June 10, 2004.
5. I further declare under penalty of perjury that all statements made herein are true to the best of my knowledge, information and belief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Nicholas Gross".

J. Nicholas Gross

January 25, 2005
726 Duboce Ave.
San Francisco, CA 94117
Tel. (415) 355-9800
Fax (415) 355-9006

I hereby certify that the foregoing is being deposited with the U.S. Postal Service, postage prepaid, to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 this 25th day of January 2005.

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**FEE TRANSMITTAL
for FY 2005**

Effective 10/01/2004. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 130)

Complete if Known

| | |
|----------------------|------------------|
| Application Number | 10/771,049 |
| Filing Date | February 2, 2004 |
| First Named Inventor | Gross |
| Examiner Name | N/A |
| Art Unit | 3621 |
| Attorney Docket No. | JNG 2004-5 |

METHOD OF PAYMENT (check all that apply)
 Check Credit card Money Order Other None
 Deposit Account:Deposit Account Number
501244

J. Nicholas Gross

The Director is authorized to: (check all that apply)

-
- Charge fee(s) indicated below
-
- Credit any overpayments
-
-
- Charge any additional fee(s) or any underpayment of fee(s)
-
-
- Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION**1. BASIC FILING FEE**

| Large Entity | Small Entity | Fee Description | Fee Paid |
|--------------------------|---------------|------------------------|----------|
| Fee Code (\$) | Fee Code (\$) | | |
| 1001 790 | 2001 395 | Utility filing fee | |
| 1002 350 | 2002 175 | Design filing fee | |
| 1003 550 | 2003 275 | Plant filing fee | |
| 1004 790 | 2004 395 | Reissue filing fee | |
| 1005 160 | 2005 80 | Provisional filing fee | |
| SUBTOTAL (1) (\$) | | | |

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

| Total Claims | Extra Claims | Fee from below | Fee Paid |
|--------------------|--------------|----------------|----------|
| | -20** = | X | = |
| Independent Claims | - 3** = | X | = |
| Multiple Dependent | | | = |

| Large Entity | Small Entity | Fee Description |
|--------------------------|---------------|--|
| Fee Code (\$) | Fee Code (\$) | |
| 1202 18 | 2202 9 | Claims in excess of 20 |
| 1201 88 | 2201 44 | Independent claims in excess of 3 |
| 1203 300 | 2203 150 | Multiple dependent claim, if not paid |
| 1204 88 | 2204 44 | ** Reissue independent claims over original patent |
| 1205 18 | 2205 9 | ** Reissue claims in excess of 20 and over original patent |
| SUBTOTAL (2) (\$) | | |

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

| Fee Code (\$) | Fee Code (\$) | Fee Description | Fee Paid |
|-----------------------------------|---------------|--|----------|
| 1051 130 | 2051 65 | Surcharge - late filing fee or oath | |
| 1052 50 | 2052 25 | Surcharge - late provisional filing fee or cover sheet | |
| 1053 130 | 1053 130 | Non-English specification | |
| 1812 2,520 | 1812 2,520 | For filing a request for ex parte reexamination | |
| 1804 920* | 1804 920* | Requesting publication of SIR prior to Examiner action | |
| 1805 1,840* | 1805 1,840* | Requesting publication of SIR after Examiner action | |
| 1251 110 | 2251 55 | Extension for reply within first month | |
| 1252 430 | 2252 215 | Extension for reply within second month | |
| 1253 980 | 2253 490 | Extension for reply within third month | |
| 1254 1,530 | 2254 765 | Extension for reply within fourth month | |
| 1255 2,080 | 2255 1,040 | Extension for reply within fifth month | |
| 1401 340 | 2401 170 | Notice of Appeal | |
| 1402 340 | 2402 170 | Filing a brief in support of an appeal | |
| 1403 300 | 2403 150 | Request for oral hearing | |
| 1451 1,510 | 1451 1,510 | Petition to institute a public use proceeding | |
| 1452 110 | 2452 55 | Petition to revive - unavoidable | |
| 1453 1,370 | 2453 685 | Petition to revive - unintentional | |
| 1501 1,370 | 2501 685 | Utility issue fee (or reissue) | |
| 1502 490 | 2502 245 | Design issue fee | |
| 1503 660 | 2503 330 | Plant issue fee | |
| 1460 130 | 1460 130 | Petitions to the Commissioner | 130 |
| 1807 50 | 1807 50 | Processing fee under 37 CFR 1.17(q) | |
| 1806 180 | 1806 180 | Submission of Information Disclosure Stmt | |
| 8021 40 | 8021 40 | Recording each patent assignment per property (times number of properties) | |
| 1809 790 | 2809 395 | Filing a submission after final rejection (37 CFR 1.129(a)) | |
| 1810 790 | 2810 395 | For each additional invention to be examined (37 CFR 1.129(b)) | |
| 1801 790 | 2801 395 | Request for Continued Examination (RCE) | |
| 1802 900 | 1802 900 | Request for expedited examination of a design application | |
| Other fee (specify) _____ | | | |
| *Reduced by Basic Filing Fee Paid | | SUBTOTAL (3) (\$) 130 | |

(Complete if applicable)

| | | | |
|-------------------|---|--------------------------------------|--------|
| SUBMITTED BY | | | |
| Name (Print/Type) | J. Nicholas Gross | Registration No. (Attorney/Agent) | 34,175 |
| Signature |  | | |
| | Date | Telephone 415-355-9800 | |
| | January 25, 2005 | | |

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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